Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1823

L. B. MCFARLAND, *Petitioner,*

v.

STATE OF GEORGIA, *Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS.

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

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No.

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L. B. MCFARLAND, *Petitioner,*

v.

STATE OF GEORGIA, *Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS.

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Petitioner L. B. McFarland prays that a writ of certiorari issue to review the judgment herein of the Georgia Court of Appeals entered in the above-entitled case on January 6, 1976. Application to the Georgia Supreme Court for a writ of certiorari was denied on March 11, 1976.

### OPINION BELOW

The opinion of the Georgia Court of Appeals is not yet reported, but a copy is annexed hereto in an appendix to this Petition. The order of the Georgia Supreme Court denying certiorari is not yet reported.

The opinion of the Court of Appeals affirmed the conviction of the Petitioner on a charge of keeping a gambling place, in violation of Ga. Code § 26-2704.

## JURISDICTION

The judgment of the Georgia Court of Appeals was entered on January 6, 1976. Application for certiorari was denied by the Georgia Supreme Court on March 11, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## QUESTION PRESENTED

Does an affidavit in support of a search warrant, which is based on information from an un-named informant meet Fourth Amendment requirements when (1) the affidavit contains no facts disclosing the manner in which the informant gathered the information from which he concluded that the Petitioner was engaged in criminal activity; and (2) the affidavit contains no independent corroboration of the informant's conclusion?

## CONSTITUTIONAL PROVISION INVOLVED

### Amendment IV

The right of the people to be secure in their persons, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

The Petitioner was arrested and charged with the misdemeanor of keeping a gambling place.



The Petitioner made a Motion to Suppress based, inter alia, on the State's total failure to satisfy the second prong of *Aguilar-Spinelli*.[1]

After a hearing, the Motion was denied.

At the Petitioner's trial, evidence derived from the search was admitted over vigorous objection. McFarland was convicted and sentenced to twelve months in the penitentiary, a $5,000.00 fine and payment of costs.

Timely appeal was taken; the Georgia Court of Appeals affirmed. Application was then made to the Georgia Supreme Court for a writ of certiorari; that Motion was denied.

## REASONS FOR GRANTING THE WRIT

### The State Totally Failed To Show Any Factual Basis for the Issuance of the Search Warrant Herein.

The Petitioner was searched based on an affidavit in which it was alleged that an un-named "confidential informant" had stated that he, the Petitioner, was running a lottery.

There was no showing made as to how the informant obtained his information regarding any criminal activity.

Furthermore, the informant did not set out any details of the Petitioner's alleged criminal activity. There was nothing to authorize an issuing magistrate to conclude that the informant's belief was anything other than a "casual rumor circulating in the underworld."

---

[1] *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Spinelli* v. *United States*, 393 U.S. 410 (1969).

In fact, A.T.F. Agent Baughn, one of the State's principal witnesses, admitted that even he could not say whether the informant had personal knowledge of the alleged crimes. (S. 95).

The affiant was one Agent Garner. He never even met the informant. Instead, he asked questions of Baughn, who relayed them to the informant and then transmitted the answers back to Garner.

Another officer on the case, Agent Hays also met the informant. He was told that the informant had purchased lottery tickets from two people, but never from the Petitioner. Furthermore, Hays testified during the hearing on the Motion to Suppress that at no time did the informant give any reason for believing that McFarland was involved in the sale of the lottery tickets.

In other words, there was nothing in the affidavit to give any credence to the bald conclusions that the Petitioner was involved in any criminal activity.

Not one single fact was set out to indicate any criminal activity on the part of McFarland.

The second prong of the *Aguilar-Spinelli* test was thus not met. It was, in fact totally overlooked by the Affiant, the issuing magistrate, the trial judge, and the Georgia Court of Appeals.



## CONCLUSION

Because of the serious Fourth Amendment problems, and because of the total failure of the State to comply with the requirements of *Aguilar-Spinelli,* the decision of the Georgia courts should be reconsidered by this Court.

Respectfully submitted,

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# APPENDIX

**APPENDIX**

No. 51358

M-156

McFARLAND

v.

THE STATE

(January 6, 1976)

MARSHALL, *Judge.*

Appellant was convicted of the misdemeanor of keeping a gambling place and sentenced to 12 months and a $5,000 fine. In his appeal, he enumerates 31 errors dealing principally with (1) the sufficiency of the evidence, (2) probable cause for the issuance of a search warrant, (3) hearsay testimony, (4) the reopening of the state's case, and (5) closing remarks of the prosecuting attorney. *Held:*

1. Appellee's motion to dismiss the appeal is denied. Appellant's motion for new trial was based on the same grounds enumerated as error in this appeal; his appeal is from the judgment and conviction and not from the denial of his motion for new trial; and the denial of his motion is not enumerated as error. *Hill* v. *Willis,* 224 Ga. 263 (161 SE2d 281). Nevertheless, Rule 14(e) of the Court of Appeals, 124 Ga. App. 873, (that the enumerations are deemed to present for review all judgments necessary for determination of the errors specified) has held to supersede *Hill* v. *Willis,* supra. *Echols* v. *State,* 134 Ga. App. 216 (1) (213 SE2d 907).

2. Enumerations 1, 2, 3, 15, 25, and 26 contest the sufficiency of the evidence on general grounds and on the specific ground that the lottery paraphernalia seized at the club was not shown to be under the appellant's control. The evidence at trial showed that on the night of March

30, 1974, a raid and search was conducted by the Georgia Bureau of Investigation on the Lowndes County Country Club. The Club had been surveilled by G.B.I. agents for three weeks prior to the raid and appellant had been seen frequently seated at the front door of the club greeting the numerous people coming into and going from the club. As a result of the raid, numerous items of gambling paraphernalia (adding machines, note pads with numbers on them, tapes, numerous slips of paper with numbers on them, cans and cartons of money, a "bingo ball barrel," sacks of slips of paper) were found on two large tables in a back room of the club. In the qualified opinion of the witness, the materials were lottery records. In addition, appellant lived in a trailer approximately 200 feet from the Club with a path running from the trailer to the club. A search of appellant's trailer revealed other tablets and slips of paper with numbers and more currency. The appellant had also told investigators that he had an office in the club building from which he conducted business for his farming operations. The evidence was sufficient to establish that appellant was keeping a gambling place.

3. In Enumerations 4, 5, 6, 7 and 13, appellant sets forth various reasons why his motion to suppress should have been granted. The affidavit, written by a G.B.I. agent and submitted in support of the warrant, was a lengthy eight-page chronicle summarizing approximately three weeks of G.B.I. surveillance of the Lowndes County Country Club and various "writers" who were seen at the club. Shorn of its irrelevant statements and its occasional opinions or conclusions and of its obvious stale information, the affidavit states that: On February 8, 1974, a reliable informant (reliability is not contested except as to the source of some facts stated) told another agent who told affiant that the had bought bolita numbers from a writer named Simpson and one named Warren. Subsequently, on March 8, affiant observed Simpson drive



to several places around Valdosta meeting with various people at each stop. The following Friday, March 15, Simpson was again observed driving to several places around town and ending up at appellant's trailer and the Country Club. The following Friday, numerous persons were seen entering and leaving the club. At least one of these persons handed appellant a package, which appellant took to his trailer. Later that evening Simpson arrived at the club and was greeted by appellant, stayed for a short while and then departed.

This information was sufficient to show gambling activities and to establish probable cause for a search of the club and appellant's trailer. "The test of probable cause is whether it would justify a man of reasonable caution in believing that an offense has been or is being committed, and this requires merely a probability—less than a certainty but more than a mere suspicion or possibility. [cits.]." *Butler* v. *State,* 130 Ga. App. 469, 470 (203 SE2d 558). It is true that these facts may have shown innocent activity, but it is not necessary that the related information exclude every possibility that the observed activity is innocuous, only that it show with reasonable certainty that the activity was, in fact, criminal. There is a great "'difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search.' [cits.]" *Baxter* v. *State,* 134 Ga. App. 286, 288 (214 SE2d 578). Nor did the manner in which the search was conducted require the exclusion of the evidence seized at the club or permit cross-examination on this matter. The record shows that no evidence was seized as result of the alleged offensive aspects of the search.

4. Enumerations 9, 10 and 11 concern testimony from various witnesses which was objected to as hearsay. As to the testimony in Enumeration 9, it was not hearsay. Code § 38-302. The objections to testimony specified in

Enumerations 10 and 11 was sustained by the trial judge and the jury instructed to disregard it.

5. In Enumerations 16, 17, 18 and 28, the appellant raises the issue of whether the trial court erred in allowing the state to reopen its case after both sides had rested and the appellant had moved for a directed verdict of acquittal. The district attorney moved to reopen its case because, as he told the trial judge, he had inadvertently neglected to ask a witness certain questions which had bearing on appellant's control and operation of the club.

Allowing the state to reopen its case is a matter within the discretion of the trial judge and we find no abuse of that discretion in this case. *Jacobs* v. *State,* 134 Ga. App. 527 (2) (215 SE2d 279); *Davis* v. *State,* 127 Ga. App. 76 (3) (192 SE2d 538). Nor does the fact that the witness violated the rule of sequestration affect the admissibility of his testimony, though it may affect his credit, as appellant's counsel recognized in its cross-examination of the witness. Code § 38-1703. In this case, the witness discussed his testimony with the district attorney and with another person who was not called as a witness. Under these circumstances, the trial judge did not abuse his discretion. Compare, *Rozier* v. *State,* 124 Ga. App. 481 (2) (184 SE2d 203) and *Silas* v. *State,* 133 Ga. App. 560 (2) (211 SE2d 609). Finally, the testimony of this witness, concerning keys he found while executing the search warrant of appellant's trailer, was not inadmissible as a result of violation of appellant's Fourth Amendment rights. The keys were found within the authority of the search warrant.

6. In Enumeration 19, appellant contends the court erred in denying his motion for mistrial when the district attorney made admittedly improper remarks during his closing argument. The record shows that the district attorney apologized and the court clearly instructed the



jury to disregard the remark. We have carefully reviewed the circumstances of this remark and its treatment by the court and are satisfied that ". . . the corrective action taken by the trial judge formed a basis sufficient to support his discretionary judgment in denying the motion for mistrial." *Hutto* v. *State,* 116 Ga. App. 140, 141 (156 SE2d 498).

7. Other enumerations have not been argued in appellant's brief and are, therefore, deemed abandoned. Rule 18(c)(2), Rules of Court of Appeals.

*Judgment affirmed. Bell, C. J., and Webb, J., concur.*

Supreme Court, U. S.
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OCTOBER TERM, 1976

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L. B. McFARLAND, *Petitioner,*

v.

STATE OF GEORGIA, *Respondent.*

## ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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## ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### QUESTION PRESENTED

1.

Did the affidavit for the search warrant establish probable cause?

### STATEMENT OF THE CASE

Petitioner was arrested and charged with keeping a gambling place, a misdemeanor.

A Motion to Suppress was filed by Petitioner based, on the

alleged failure of the State to show probable cause. Petitioner alleged that the affidavit was based solely on information obtained from an informer and did not contain any independent corroboration of the informant's conclusions. After a hearing, the Motion was denied.

Petitioner was tried and convicted. Petitioner was subsequently sentenced to twelve months, a $5,000.00 fine and payment of cost.

Petitioner appealed his conviction to the Georgia Court of Appeals, and his conviction was affirmed. *See McFarland v. State*, 137 Ga. App. 354, (Southeastern citation not available). Motion for rehearing was filed and denied, and Petitioner applied for certiorari in the Georgia Supreme Court. The Georgia Supreme Court denied the Writ of Certiorari.

## REASONS FOR NOT GRANTING THE WRIT

### A. THE PETITION FOR WRIT OF CERTIORARI IS NOT OF SUCH AN EXTRAORDINARY NATURE THAT IT REQUIRES THIS COURT TO ISSUE SUCH A WRIT.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and controlling reasons therefor." Rule 19, Revised Rules of the Supreme Court of the United States (1970). This Court generally grants certiorari from a state court decision under the following circumstances: (1) if the state court has decided a federal question of substance not previously determined by this Court or (2) if the state court has decided a case in a way not in accord with applicable decisions of this Court. *See* Rule 19, Revised Rules of the Supreme Court of the United States (1970).



Petitioner's question for review presents no substantial federal question not previously determined by this Court, and the state court decision is fully in accord with the applicable decisions of this Court. The Georgia Court of Appeals fully considered the question presented here on direct appeal, and the Georgia Supreme Court denied certiorari.

### B. AFFIDAVIT SHOWED FACTUAL BASIS FOR ISSUANCE OF THE SEARCH WARRANT HEREIN.

Petitioner contends that the affidavit is defective in that it does not meet or satisfy the second prong of *Aguilar—Spinelli*. This is a reference to the case of *Aguilar v. Texas*, 378 U.S. 108 (84 SCt 1509, 12 LE2d 723) and *Spinelli v. U.S.* 393 U.S. 410 (89 SCt 584, 21 LE2d 637). This Court stated in both of these cases that the affidavit upon which a search warrant is issued based on an informer's tip must (1) give reasons for the informer's reliability, and (2) that the affidavit either specifically state how the informer obtained the information or the tip describes the criminal activity in such detail that the magistrate may know it is more than a "casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." Petitioner contends that the second test has not been met.

In *Spinelli* the affidavit was only a bald statement that the FBI "has been informed by a confidential reliable informant that Wm. Spinelli is operating a handbook and accepting wages and disseminating wagering information by means of the telephone..." There is a vast difference between this and the affidavit in the present case. Here the affidavit is detailed as to time and place. Also, the affidavit is corroborated by the extensive independent investigation of the GBI.

The Georgia Court of Appeals discussed the affidavit in

detail in Division 3 of its decision and concludes that the informer's tip and the independent investigation of the affiant, Agent Garner, established probable cause.

The independent investigation of the GBI was reliable information to detail the criminal activity here. In *U.S. v. Ventresca*, 380 U.S. 102, 13LEd2d 684, 85 SCt 741, this Court held observations of fellow officers engaged in a common investigation are a reliable basis for a warrant.

The Petitioner also asserts that the affidavit shows no criminal activity on the part of McFarland. Here again, this Court's decision in *U.S. v. Ventresca*, supra, clearly holds that there is a large difference between guilt and probable cause for the issuance of a search warrant and probable cause means less than evidence which would justify conviction. Here the evidence may have shown innocent activity, but considering all the related information it does show the probability or reasonable certainty of criminal activity. This point was also detailed in the Georgia Court of Appeals decision.

The test of the *Aguilar-Spinelli* decision was met, and was not overlooked by affiant, the issuing magistrate, the trial judge, or the Georgia Court of Appeals.



## CONCLUSION

This Court should refuse to grant a writ of certiorari because no sufficient reason for review or error by the Georgia Court of Appeals has been set forth by Petitioner.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, GEORGE T. TALLEY, Attorney of Record for the respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of the foregoing Brief for the Respondent in Opposition upon the petition by depositing a copy of same in the United States mail, with proper address and adequate postage thereon to:

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This 13 day of July, 1976.

/s/ GEORGE T. TALLEY
GEORGE T. TALLEY

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**ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT**

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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TO THE GEORGIA SUPREME COURT

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BRIEF FOR THE RESPONDENT IN OPPOSITION

---

QUESTION PRESENTED

Did the trial court err in finding a tip from a reliable informant was supported by independent corroboration of the officer who wrote the affidavit in support of a search warrant?

## STATEMENT OF THE CASE

Petitioner was convicted in the State Court of Lowndes County, Georgia, of the misdemeanor of keeping a gambling place. He was sentenced to 12 months imprisonment and a $5000 fine. His conviction was affirmed January 26, 1976. See McFarland v. State, 317 Ga. App. 354, ____ S.E. 2d ____ (1976). Rehearing was denied January 23, 1976, and the Georgia Supreme Court denied certiorari on March 11, 1976.



## REASON FOR NOT GRANTING THE WRIT

THE PETITION FOR THE WRIT OF CERTIORARI IS NOT OF SUCH AN EXTRAORDINARY NATURE THAT IT REQUIRES THIS COURT TO ISSUE SUCH A WRIT.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and controlling reasons therefor." Rule 19, Revised Rules of the Supreme Court of the United States (1970). This Court generally grants certiorari from a state court decision under the following circumstances: (1) if the state court has decided a federal question of substance not previously determined by this Court or (2) if the state court has decided a case in a way not in accord with applicable decisions of this Court. See Rule 19, Revised Rules of the Supreme Court of the United States (1970).

In his brief, Petitioner does not allege that Georgia law is contrary to federal law. He simply claims that the informant's tip was not corroborated by law enforcement officers. The Georgia Court of Appeals noted that the law enforcement officer's affidavit "was a lengthy eight-page chronicle summarizing approximately three weeks of GBI surveillance

[emphasis added] of the Lowndes County Country Club." McFarland v. State at 355-56. The Georgia Supreme Court saw that Petitioner's enumeration was patently frivolous and denied certiorari.

Now Petitioner asks the Supreme Court of the United States to review the finding of fact by a trial court that the informer's tip was corroborated by police surveillance. The writ of certiorari clearly is not to be granted under these circumstances. See N. L. R. B. v. Pitts. Steamship Co., 340 U.S. 498, 502 (1951).



## CONCLUSION

This Court should refuse to grant a writ of certiorari because no sufficient reasons for review have been set forth by Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard L. Chambers, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for Respondent in Opposition upon the petitioner by depositing a copy of same in the United States mail, with proper address and adequate postage to:

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This 27th day of July, 1976.

Richard L. Chambers
RICHARD L. CHAMBERS

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## PETITIONER'S REPLY BRIEF

---

### INTRODUCTION

The Attorney General's Brief for the Respondent in Opposition states at page 4:

> "The Georgia Supreme Court saw that Petitioner's enumeration was *patently frivolous* and denied certiorari." [emphasis added].

The basis therefor, the State says, is the Opinion of the Court of Appeals, in which the underlying affi-

davit, submitted in support of the application for the search warrant contained "a lengthy eight-page chronicle summarizing approximately three weeks of G.B.I. surveillance of the Lowndes County Country Club." Brief, pp. 3-4.

## ARGUMENT

To begin with, there is no way of knowing why the Supreme Court of the State of Georgia denied certiorari, since it rendered no opinion.

Second, the Georgia Court of Appeals' reliance on the underlying affidavit's length was misplaced. The three-week surveillance was not of the Lowndes County Country Club, but rather of two individuals, neither of whom was ever in any way connected with the Petitioner McFarland. Such surveillance as was conducted at the Lowndes County Country Club revealed absolutely nothing of any criminal conduct on the part of the Petitioner McFarland.

In these circumstances, this Court's duty was laid down in *Ker* v. *California*, 374 U.S. 23 (1963).

> "While this Court does not sit as a nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e., constitutional—criteria established by this Court have been respected."

## CONCLUSION

Not only was the Petition for Certiorari not "patently frivolous," an independent examination by this Court of the facts, the findings, and the record



will conclusively demonstrate that constitutional criteria established by this Court in *Spinelli* v. *United States,* 394 U.S. 410 (1969) were completely ignored by the Court of Appeals of the State of Georgia.

Respectfully submitted,

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**Certificate of Service**

This is to certify that a true and correct copy of the foregoing Petitioner's Reply Brief was mailed to the following:

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Solicitor
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with sufficient postage thereon to insure delivery by first class mail.

This 9th day of August, 1976.

/s/ BERNARD H. DEMPSEY, JR.
Bernard H. Dempsey, Jr.

/s/ HERBERT SHAFER
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Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

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No. 75-1823

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L. B. MCFARLAND, *Petitioner*

v.

STATE OF GEORGIA, *Respondent*

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## PETITIONER'S SECOND SUPPLEMENTARY BRIEF

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### INTRODUCTION

After the Petitioner filed his Petition in this case, this Court decided the case of *Stone* v. *Powell,* — U.S. —, 49 L.Ed.2d 1067 (1976). Its impact on Federal review of searches and seizures provides an additional reason for this Court to grant certiorari in this case.

### FEDERAL REVIEW

The Fourth Amendment guarantees the right of citizens "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." Traditionally, that right has been preserved, in part, by the Writ of Habeas Corpus in federal courts.

When this Court in *Stone* v. *Powell, supra,* held that federal habeas corpus will no longer be permitted in

cases where the state court has examined the validity of the search, it drastically cut down the scope of review of searches conducted by state agents. In fact, this Court is now the *only* federal forum where Fourth Amendment rights can be asserted in these cases.

It thus becomes appropriate, in an application for certiorari based on an illegal search and seizure, for this Court to examine very carefully the procedures below to insure that a full and complete hearing was conducted in the state court.

## THE RULE IN STONE v. POWELL

The Court's ruling in *Stone* v. *Powell, supra,* was predicated on two assumptions: (1) That the State has provided an opportunity for a fair litigation of the Fourth Amendment claim (*Stone* v. *Powell,* — U.S. —, 49 L.Ed.2d at 1080), and (2) That this Court provides an adequate safeguard through its oversight jurisdiction on certiorari (*Stone* v. *Powell,* — U.S. —, 49 L.Ed.2d at 1087 Fn. 35).

The importance of these assumptions was recently recognized by Mr. Justice Gunter of the Georgia Supreme Court. In a dissenting opinion, he said as follows:

> "If the Georgia Supreme Court will not enforce this constitutional principle, it now seems that the only other place for attaining its enforcement is in the Supreme Court of the United States. In Stone v. Powell [cit.], the Supreme Court of the United States has ruled that search and seizure claims, unsuccessfully asserted in state criminal proceedings, cannot be raised in federal habeas corpus review of state convictions."
>
> *Connally* v. *State,* 237 Ga. 203, 213, — S.E.2d — (1976) (dissenting opinion).



As Mr. Justice Gunter noted, review of appellate decisions arising from state searches and seizures can now be made only in the Supreme Court of the United States.

## THE STATE COURT HEARINGS

Although this case has travelled through three Georgia courts, (1) The State Court of Lowndes County, (2) The Georgia Court of Appeals, and (3) The Georgia Supreme Court, all three not only failed to analyze and apply the rules of *Aguilar* v. *Texas,* 378 U.S. 108 (1964), and *Spinelli* v. *United States,* 394 U.S. 410 (1969), to the facts of this case, but they totally ignored them; the Court of Appeals in its opinion did not even mention *Aguilar* or *Spinelli.*

*Aguilar* and *Spinelli's* rule that facts be set out to show the basis of the informant's belief that the target of the search is engaging in criminal conduct was totally ignored. In short, the Petitioner's hearing below and appellate review thereof was neither "full" nor "fair". *Stone* v. *Powell,* — U.S. —, 49 L.Ed.2d at 1080.

Here, unlike the respondents in *Stone* v. *Powell, supra,* the Petitioner did not take any procedural short-cuts by abandoning his right to seek review by this Court. Cf. *Stone* v. *Powell,* — U.S. —, 49 L.Ed. 2d 1088 Fn. 38. Admittedly this Honorable Court took on quite a burden by suggesting that, henceforth, although the habeas route was closed, appeal to this Court was a viable avenue, thus keeping alive the promise of *Mapp* v *Ohio,* 367 U.S. 643 (1961), that federal courts will maintain oversight in state search and seizure cases and that the Fourth Amendment will not become, in practice "a teasing illusion like a mu-

nificent bequest in a pauper's will." *Edwards* v. *California,* 314 U.S. 160, 186 (concurring opinion), cited in *North* v. *Russell,* — U.S. —, 49 L.Ed.2d 534, 544 (1976) (dissenting opinion).

## CONCLUSION

The facts in this case clamor for review by some tribunal which will apply the teaching of *Aguilar-Spinelli.* Thus far its teaching has been entirely ignored by the Georgia courts in which the Petitioner McFarland was tried and to which he appealed. Should this Court refuse to listen to him as well, then he will have been denied any meaningful review of his claim that his constitutional rights have been flouted and denigrated. This is a bleak prospect indeed, but the Petitioner herein believes that, unless this Court is prepared to overrule and discard the rule of *Aguilar-Spinelli,* his conviction must be reversed.

Respectfully submitted,

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